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REMARKS

Claim 45 (now claim 77) is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The subject matter of the rejected claim 45 is accordingly revised and rewritten as new claim 77 by the above claim amendments. All of the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections.

Claims 34-65 (now claims 66-97) are rejected, under 35 U.S.C. § 102(b), as being anticipated by Nappholz et al. '106. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

Turning now to the applied Nappholz et al. '106 reference, the Applicant acknowledges that this reference may arguably relate to a method and apparatus for monitoring hemodynamic function and may also arguably disclose the use of a Doppler ultrasound technique to derive an automatic closed-loop control parameter based on cardiac output to regulate the hemodynamic therapy. Nevertheless, the Applicant respectfully submits that the method and apparatus, disclosed by this applied reference, is specifically directed to controlling the blood flow to a pacemaker implanted in a patient. The present invention, on the other hand, is not concerned with controlling the blood flow through the patient but is directed at merely monitoring the blood flow through a subject and using this information to control the amount of an anaesthetic dose being administered to the subject or patient, for example. The reason for monitoring the blood flow according to the applied Nappholz et al. '106 is for a completely different purpose than that of the present invention, namely, for use in controlling the pacemaker.

Next, claims 34, 35, 44-46 and 63-65 (now claims 66, 67, 76-78 and 97-97) are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Marks '211. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

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With respect to the applied Marks '211 reference, the Applicant acknowledges that this reference arguably relates to a plethysmograph and refers to the importance of measuring peripheral blood flow. Nevertheless, the Applicant respectfully submits that this reference fails to in any way teach, suggest or disclose the feature of administering of an anaesthetic dose to the subject in response to the determined cardiac output. The method and apparatus, according to the present invention facilitates, based upon the determined cardiac output, a more precise application of the anaesthetic dose to the patient during an operation or some other medical procedure and this technique results in a safer operation or procedure for the subject.

In order to emphasize the above noted distinctions between the presently claimed invention and the applied art, the independent claims of this application now recite the features of "monitoring haemodynamic function in.....a.....subject to facilitate application of an anaesthetic dose to the subject" and "varying administration of the anaesthetic dose to the subject based upon the cardiac output". Such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including the applied art.

If the Examiner disagrees with the Applicant's view concerning the applicability of the Nappholz et al. 106 and/or Marks '211 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law concerning the above noted features. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

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In view of the foregoing, it is respectfully submitted that this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, with sufficient postage, as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on June 22, 2001.

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